

REMARKS

The Final Office Action mailed October 2, 2008 and references cited therein have been reviewed. Applicants have amended claims 1 and 49 by this amendment. Claims 1 and 49 were objected to by the Examiner for including grammatical errors. Applicants have amended the claims as suggested by the Examiner.

THE SECTION 103 REJECTIONS

Claims 1, 5, 10, 11, 13, 27, 29, 31, 49, 50, 57, 60 and 74-76 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice (US 6,615,450) (hereinafter "Salice") in view of Johnston (US 5,360,123) ("Johnson") and further in view of Fitzlaff (US 5,728,174) (hereinafter "Fitzlaff"). Claims 2, 6, 8, 12, and 72 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff. Claims 3, 73 and 84 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff and Geyer. Claims 4, 7 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff and Johnsen. Claims 14, 17, 18, 22, 23, 51-56, 58, 59, 61, 62, 87, 90 and 93-96 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff and Miura. Claims 15, 16, 19-21, 24-26, 28, 30, 32, 88, 89, 91 and 92 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff, Johnsen and Miura. Claims 85 and 86 were rejected under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff, Miura and Geyer.

Applicants note that in all of the Section 103 rejections, Salice is the primary reference cited against the claims. Salice does not disclose that 1) two springs are positioned in the housing, 2) the

guide member being designed to move into engagement with or moved to a position closely adjacent to the top bushing when the rod member moves to a fully extended position, 3) the top bushing including a sealing arrangement positioned at least closely adjacent to a bottom of the top bushing, 4) the guide member having a passageway which is fully spaced from the side of the guide member, 5) the passageway in the guide member including a valve, 6) the guide member including a second passageway that fully passes through the guide member, 7) the second passageway, when included, being spaced from the first passageway, 8) the second passageway, when included, being fully spaced from the outer edge of the guide member, and 9) the second passageway, when included, having a maximum flow rate that is less than the maximum fluid rate of the first passageway.

Many of these same deficiencies of Salice were raised by Applicants in the Amendment filed on June 16, 2008. The Examiner in the Final Office Action did not address the fundamental deficiency of Salice that Salice does not disclose two springs that are positioned in the housing. For this reason alone, Salice cannot be used to support a rejection of any of the pending claims. The Examiner has not presented facts and a prima facie case as to why one skilled in the art would be motivated to modify Salice to include two springs in the housing as defined in the pending claims.

The Examiner asserted on Page 10 of the Final Office Action that Salice discloses a guide member that is designed to move into engagement with or moved to a position closely adjacent to the top bushing when the rod member moves to a fully extended position. The Examiner stated that closely adjacent is a broad term, thus Salice satisfies this limitation. The Examiner ignores the structure in Salice that the guide member never contacts or even comes near the top bushing of the housing.

The Examiner acknowledged that the top bushing of Salice does not include a sealing arrangement positioned at least closely adjacent to a bottom of the top bushing. The Examiner cited Fitzlaff. Contrary to the Examiner's assertions, there is no sealing arrangement that is located at least closely adjacent to a bottom of the top bushing of Fitzlaff.

The Examiner asserted on Page 10 of the Final Office Action that Salice discloses a guide member having a passageway which is fully spaced from the side of the guide member. The Examiner appears to be ignoring passageways 41, 42 of Salice when making such assertion.

The Examiner acknowledged on Page 10 of the Final Office Action that Salice does not disclose a) the passageway in the guide member including a valve, b) the guide member including a second passageway that fully passes through the guide member, c) the second passageway, when included, being spaced from the first passageway, d) the second passageway, when included, being fully spaced from the outer edge of the guide member, and e) the second passageway, when included, having a maximum flow rate that is less than the maximum fluid rate of the first passageway.

The Examiner cited Miura in combination with Salice to overcome these deficiencies of Salice. As discussed in detail below, Salice in combination with Miura and any of the other references of record does not make obvious the invention as defined in the pending claims.

Johnston and Fitzlaff were cited by the Examiner to be combined with Salice in all of the Section 103 rejections of the pending claims. Johnston and Fitzlaff relate to a completely different type of compression spring system from the compression spring rod disclosed in Salice. Furthermore, Johnston and Fitzlaff relate to a completely different type of compression spring system from the spring defined in the claim. Johnston discloses a stabilizer that attempts to maintain the guide member on the rod member at generally the mid-region of the housing. Two sets of

springs on both sides of the guide member accomplish this task. The rod member can only be moved to the fully extended position by the compression of springs 120, 122. As such, only when an axial force is applied to the rod member to move and retain the rod member in a fully extended position can the rod member be in a fully extended position based on the teachings of Johnston. The only teaching that Johnston adds to Salice is that more than one spring can be included in the housing.

Fitzlaff discloses a swing phase control for an artificial knee joint. It is noteworthy that the bottom of the housing includes a vent bore 23 which clearly evidences that the spring arrangement of Fitzlaff is fundamentally different from the claimed invention.

Johnston does not disclose that 1) a top bushing includes a sealing arrangement, 2) the top bushing includes a sealing arrangement that is positioned at least closely adjacent to a bottom of the top bushing, 3) at least one of the springs has a free length that is at least a majority length of said internal chamber, 4) the guide member includes a first passageway that at least partially regulates fluid flow between the at least two sub-chambers during reciprocation of the rod member, 5) the first passageway is fully spaced from an outer edge of the guide member, 6) the guide member has a passageway that passes fully through the guide member, 7) the passageway in the guide member can include a valve, 8) the guide member can include a second passageway that fully passes through the guide member, 9) the second passageway, when included, is spaced from the first passageway, 10) the second passageway, when included, is fully spaced from the outer edge of the guide member, and 11) the second passageway, when included, has a maximum flow rate that is less than the maximum fluid rate of the first passageway.

Fitzlaff does not disclose that 1) a top bushing that includes a sealing arrangement that is positioned at least closely adjacent to a bottom of the top bushing, 2) the guide member includes a

first passageway that at least partially regulates fluid flow between the at least two sub-chambers during reciprocation of the rod member, 3) the first passageway is fully spaced from an outer edge of the guide member, 4) the guide member has a passageway that passes fully through the guide member, 5) the passageway in the guide member can include a valve, 6) the guide member can include a second passageway that fully passes through the guide member, 7) the second passageway, when included, is spaced from the first passageway, 8) the second passageway, when included, is fully spaced from the outer edge of the guide member, and 9) the second passageway, when included, has a maximum flow rate that is less than the maximum fluid rate of the first passageway.

The Examiner has not presented facts and arguments to support a prima facie case that one skilled in the art would be motivated to combine selected teachings from Johnston and Fitzlaff, and then combine such teachings with Miura to support an obviousness rejection of any of the pending claims. As set forth above, Johnston and Fitzlaff a) lack teachings of many of the claims limitation of the pending claims, b) pertain to a completely different spring system from the spring system disclosed in Salice, and c) pertain to a spring system that achieves a completely different result from the spring system disclosed in Salice. As such, the teachings of Johnston and Fitzlaff in combination with Salice do not overcome the deficiencies of Salice as set forth above. Applicants submit that the combination of Salice, Johnston and Fitzlaff do not make obvious any of the pending claims, thus the rejection of claims 1, 5, 10, 11, 13, 27, 29, 31, 49, 50, 57, 60 and 74-76 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and Fitzlaff should be withdrawn.

Johnsen was cited for its teaching that the direction of winding of two springs can be different. Johnsen, like Johnston and Fitzlaff, relates to a completely different type of compression spring system from the compression spring rod disclosed in Salice, and defined in the claims.

Furthermore, Johnsen does not teach most, if not all, of the deficiencies of Salice, Johnston and Fitzlaff as discussed above. Applicants submit that the combination of Salice, Johnston, Fitzlaff and Johnsen do not make obvious any of the pending claims. Applicants request that the rejection of claims 2, 6, 8, 12 and 72 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff and Johnsen be withdrawn.

Geyer was cited for its teaching that the free length of one spring is different from another spring. As with Johnsen, Johnston, and Fitzlaff, Geyer relates to a completely different type of compression spring system from the compression spring rod disclosed in Salice, and defined in the claims. Furthermore, like Johnsen, Geyer does not teach most, if not all, of the deficiencies of Salice and Johnston as discussed above. Applicants submit that the combination of Salice, Johnston, Fitzlaff and Geyer do not make obvious any of the pending claims. Applicants request that the rejection of claims 3, 73 and 84 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Fitzlaff and Geyer be withdrawn. Likewise, Applicants request that the rejection of claims 4, 7 and 9 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Johnsen, Fitzlaff and Geyer be withdrawn.

Miura was cited for the teaching of a guide member that includes first and second passageways wherein one of the passageways includes a one way valve. As an initial matter, Applicant asserts that Miura is not proper art to be combined with Salice, Fitzlaff, Johnsen, Johnston and/or Geyer. Salice, Johnsen, Fitzlaff, Johnston and Geyer, like the pending claims, are directed to a spring system that includes the use of a mechanical spring, whereas Miura does not include any mechanical spring. As such, the combination of Salice, Johnsen, Fitzlaff, Johnston and/or Geyer with Miura cannot be used to support a rejection of any of the pending claims under 35 U.S.C. §103.

Furthermore, as with Johnsen, Johnston, Fitzlaff and Geyer as set forth above, Miura relates to a completely different type of compression spring system from the compression spring rod disclosed in Salice, and defined in the claims. Miura does not disclose that 1) any springs are positioned in the housing, 2) the guide member is designed to move into engagement with or moved to a position closely adjacent to the top bushing when the rod member moves to a fully extended position, 3) the top bushing includes a sealing arrangement positioned at least closely adjacent to a bottom of the top bushing, 4) the second passageway, when included, has a maximum flow rate that is less than the maximum fluid rate of the first passageway, 5) at least one of the springs has a free length that is at least a majority length of said internal chamber, 6) the guide member has a first passageway which is fully spaced from the side of the guide member, 7) the guide member can include a second passageway that fully passes through the guide member, 8) the second passageway, when included, is spaced from the first passageway, 9) the second passageway, when included, is fully spaced from the outer edge of the guide member, and 10) the guide member has a first passageway which fully passes through the guide member.

Applicants request that the rejection of claims 15, 16, 19-21, 24-26, 28, 30, 32, 88, 89, 91 and 92 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Johnsen, Fitzlaff, and Miura be withdrawn. Likewise, Applicants request that the rejection of claims 85 and 86 under 35 U.S.C. §103(a) as being unpatentable over Salice in view of Johnston and further in view of Miura and Geyer be withdrawn.

Applicant submits that for at least the reasons set forth above, none of the pending claims in the above-identified patent application are obvious in view of the cited art of record. Applicant respectfully requests that the rejection of the claims be withdrawn and that such claims be indicated

as allowable.

Respectfully submitted,
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